Supreme Court of the United States

October Term, 1976

No. 76-1475

LAMB ENTERPRISES, INC., EDWARD O. LAMB, *et al.*,
Petitioners,

vs.

HONORABLE GEORGE N. KIROFF, *et al.*,
and RUSSELL MORTON BROWN,
Respondents.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above captioned case on January 31, 1977 wherein it reversed a judgment of the United States District Court for the Northern District of Ohio, Western Division and vacated a permanent injunction previously decreed by that Court.

The ground for this Petition is that the Court of Appeals has incorrectly decided important questions of federal law which have not been but should be settled by this Supreme Court.

OPINIONS BELOW

The Opinion of the Court of Appeals entered in this case has not yet been reported. It and that Court's judgment are reprinted in the appendix to this Petition at pages A14 and A36.

The Opinion of the District Court is reported at 399 F. Supp. 409 and is printed in the appendix to this Petition at page A1.

The Judgment of the District Court was entered September 2, 1975 and is printed in the appendix at page A13.

JURISDICTION

The original jurisdiction of the District Court is based on the All Writs Statute, 28 U.S.C. §1651 and upon the specific exception to the Anti-Injunction Statute, 28 U.S.C. §2283 which recognizes jurisdiction in the district courts "to protect and effectuate judgments of federal courts."

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

This case directs attention to (1) the sharp contrast between the constitutional full faith and credit accorded a judgment for the plaintiff and that recognized in a judgment for a defendant and (2) the right of a Federal Court to enjoin State Court relitigation of a Federal Court *civil* judgment.

The questions presented for review by this Petition, stated affirmatively, are:

1. The right of full faith and credit to a final judgment of the United States District Court for the District of Columbia in the Ohio courts is a Federal constitutional right, a cornerstone fundamental to the federalism of the United States Government, and the Federal Courts have jurisdiction to issue writs and injunctions to prevent relitigation of such judgment. Art. IV, Section 1, U. S. Constitution, 28 U.S.C. §§1738, 1651 and 2283.

2. The constitutional right of full faith and credit entitles a final judgment of the United States District Court for the District of Columbia, which precludes further litigation on the same claim between the same parties in that jurisdiction, to the same fully preclusive effect in the courts of every state of the United States. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943).

3. The *Younger-Huffman* holdings do not apply to all civil cases, particularly where their principles conflict with the very concept of federalism and comity which those decisions were intended to support and fortify. *Younger v. Harris*, 401 U.S. 37 (1971); *Huffman v. Pursue*, 420 U.S. 592 (1975).

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

These questions arise under United States Constitution Article IV, Section 1 (Full Faith and Credit) and Article VI, Clause 2 (Supreme Law of the Land) and under 28 U.S.C. §1738 (Full Faith and Credit), 42 U.S.C. §1983 (Constitutional Rights), 28 U.S.C. §1651 (All Writs Statute) and 28 U.S.C. §2283 (Third Exception to the Anti-Injunction Statute). Their particular provisions are set forth in the appendix starting at page A37.

STATEMENT OF THE CASE

This is an action to enjoin the relitigation of a District of Columbia United States District Court civil judgment, entered after extended trial and affirmed on appeal, to effectuate and protect that judgment and to obtain recognition of the full faith and credit guaranteed to it by the United States Constitution. Article IV, Section 1 United States Constitution; 28 U.S.C. §1738.

The District Court assumed jurisdiction under the third exception of 28 U.S.C. §2283 to protect and effectuate that judgment. In accordance with the holding of *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), it recognized that this judgment should be given the same full faith and credit it has in the District of Columbia where it was entered and, consequently, enjoined the Ohio relitigation of that claim as fully precluded in the District of Columbia and, therefore, equally precluded throughout the United States.

The Sixth Circuit Court of Appeals reversed stating that "the District Court should have exercised equitable restraint and left this litigation" to the Ohio courts. It based its decision principally on *Younger v. Harris*, 401 U.S. 37 (1971) and *Huffman v. Pursue*, 420 U.S. 592 (1975). It did not accept the third exception of 28 U.S.C. §2283 as properly supporting injunctive jurisdiction.

The two lower court decisions put at odds the "federalism" of *Magnolia Petroleum* ("nationwide application" of adjudicated rights) and that of *Younger* and *Huffman* (non-intervention in pending State Court cases). The critical difference is the constitutional right of full faith and credit, i.e., the *constitutional right* that, nationwide, a final judgment must be given the same preclusive effect it has where rendered, as compared with the *judicial doctrine* of res judicata, the effect of which is determined by the court asked to enforce it.

This important and fundamental distinction has never been drawn and it should be settled by this Court.

The District of Columbia Case. On May 21, 1963, Russell Morton Brown filed suit in the United States District Court for the District of Columbia alleging that attorney's fees were due him from Edward Lamb and Dispatch, Inc. (corporate predecessor to Lamb Enterprises, Inc.). He vigorously and successfully opposed all efforts of Lamb and Dispatch, Inc. to avoid the jurisdiction of that Court. Motions to quash service and motions for summary judgment were filed by Lamb and denied by the Court. For seven years Brown fully prosecuted his claim in that jurisdiction. After eleven days of trial, October 16-November 1, 1967, verdicts were returned and judgment entered against defendants for $400,000. On December 22, 1967 this was vacated and the trial judge entered judgment n.o.v. for Lamb and Dispatch, Inc. on the ground that Brown presented "no evidence * * * requisite for taking" his "action out of the statute of limitations." This was affirmed by the United States Court of Appeals. *Brown v. Lamb*, 414 F.2d 1210 (D.C. Cir. 1969). And this Court denied certiorari. 397 U.S. 907 (1970).

In a final effort and after denial of certiorari, Brown filed a motion in the Court of Appeals for leave to file a petition for rehearing en banc. This was denied March 30, 1970 and further litigation of his claim in that case was *fully precluded.*

The Ohio Case. Seven years before the District of Columbia case, on April 28, 1959, Brown had filed the iden-

tical suit in Lucas County, Ohio Common Pleas Court against Edward Lamb and Dispatch, Inc. whose residence and office were in that county. During the 18 years which have transpired, it was for long periods of time on the inactive docket. Originally, a motion directed to the Complaint resulted in a dismissal, appeal and reversal. Finally, on March 24, 1969, it was dismissed for want of prosecution.

Brown took no action until after the District of Columbia Court of Appeals turned down his request for rehearing. Then he filed a motion to vacate. The dismissal was vacated, then reinstated. The reinstatement was appealed and affirmed by the Ohio Court of Appeals but reversed by the Ohio Supreme Court in *Brown v. Lamb*, 36 Ohio St. 2d 8 (1973). After remand, an amended motion to dismiss was filed and overruled. Next, with Court leave, Brown filed an Amended Complaint naming as new parties the corporate successors of Dispatch, Inc. and Judge Kiroff of the Lucas County, Ohio Common Pleas Court "indicated that the cause will proceed to trial." (Appendix p. A5).

So that if the Federal Courts do not now protect the District of Columbia judgment, it cannot again be considered by any Federal Court until it returns to this Supreme Court (the "final arbiter" of full faith and credit questions) on a later petition for certiorari after decisions by the Ohio Trial, Appellate and then Supreme Courts.

The Present Action for Injunction. On September 13, 1974, Lamb and the other State Court defendants initiated the present action in the United States District Court. Federal Court jurisdiction was based on 28 U.S.C. §1343(3) and reliance was placed on the Civil Rights Statute, 42 U.S.C. §1983. The relief sought in the District Court was an in-

junction against further prosecution[1] of the Ohio State Court suit on the ground that it would violate the full faith and credit due to the District of Columbia judgment.

The District Court determined that Brown's cause of action was put to rest with the final judgment in the District of Columbia court. This final judgment was entitled to full faith and credit which he recognized as a constitutional right subject to protection under 42 U.S.C. §1983. He also found that the Ohio law suit constituted relitigation of the District of Columbia case and that the issuance of an injunction to protect and effectuate Federal Court judgments was permitted under the last exception of 28 U.S.C. §2283. Further prosecution of the State Court proceedings was enjoined (Appendix page A13).

On appeal, the Court of Appeals for the Sixth Circuit, advancing the grounds that such injunction was an unwarranted interference in State Court litigation, held that the District Court should have "exercised equitable restraint and left this litigation for resolution in the State Courts of Ohio." (Appendix pages A14 to A36).

In this holding, the Court of Appeals brushed aside and disregarded (1) the constitutional provisions for full faith and credit as the supreme law of the land, (2) the statute providing that judgments are to have "the same full faith and credit" throughout the United States as in the court "from which they are taken," (3) the statute authorizing Federal Courts to issue writs necessary or appropriate in aid of their jurisdiction and (4) the specific exception to

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1. Including the State Court Judge as a defendant and subsequent entry of the temporary and permanent injunctions obviated the need for him to record and report to the Ohio Supreme Court the then 16 year old Ohio case as pending, overage and not tried.

the anti-injunction statute permitting injunctions to protect and effectuate Federal Court judgments.

Trial of the pending case in the Ohio court will compel the relitigation of the District of Columbia judgment which full faith and credit was intended to avoid.

The Court of Appeals failed to recognize the critical difference between constitutional—statutory full faith and credit and the judicially declared doctrine of res judicata. This was error which requires clarification and correction by this Court.

ARGUMENT

I. The Right of Full Faith and Credit to a Final Judgment of the United States District Court for the District of Columbia Judgment in the Ohio Courts Is a Federal Constitutional Right, a Cornerstone Fundamental to the Federalism of the United States Government, and the Federal Courts Have Jurisdiction to Issue Writs and Injunctions to Prevent Relitigation of Such Judgment.

The constitutional and statutory mandate of full faith and credit is basic and it is substantively different from the decisional rules of res judicata and comity.

Full faith and credit is established by the Constitution. Congress has been given the authority to prescribe its effect. By statute that "Effect" is precisely defined, and it is the supreme law of the land. Article IV, Section 1, United States Constitution (Full Faith and Credit); Article VI, Clause 2, United States Constitution (Supreme Law of the Land); and 28 U.S.C. §1738.

As Congress enacted in 28 U.S.C. §1738, the effect of out-of-state judgments is that they "shall have the same full faith and credit in every court * * * as * * * in the courts * * * from which they are taken." Thus, it is the District of Columbia, not the State of Ohio that determines the conclusive nature of the December 22, 1967 judgment n.o.v. in favor of Lamb and Dispatch, Inc. No further litigation of Brown's claim for attorney's fees between himself and Lamb and Dispatch, Inc. can be prosecuted in the District of Columbia and this same effect must be recognized in Ohio courts.

Neither res judicata nor comity has these attributes. They are not based on enacted law. Res judicata is neither constitutional nor statutory. It is "purely a rule of judicial administration to be applied, like all such rules, as considerations of justice and right application of the policy required * * *." *Angel v. Bullington*, 330 U.S. 183, *dissenting opinion* 201-02 (1947); see also *Commissioner of Internal Revenue v. Sunnen*, 333 U.S. 591, 597 (1948). "* * * the doctrine of res judicata is not clear and sharp in outline. It is a rule of judicial administration grounded upon the need for putting a period to litigation." *Monagas v. Vidal*, 170 F.2d 99, 196 (1948), *cert. denied* 335 U.S. 911 (1949).

Comity is even more fluid. "* * * in the legal sense [it] is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation *allows* within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." (Emphasis added). *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895).

As with any local policy, application of res judicata or comity is determined by the court enforcing a judgment rather than the court which entered it. "The public policy [res judicata] of a state is to be deduced from its Constitution, laws and judicial decision." 15A C.J.S. 395, *Conflict of Laws*, §4(4)b; *Bond v. Hume*, 243 U.S. 15 (1917). The enforcing court sometimes looks behind the judgment to the issues presented or beyond it to those which might have been presented. *Grubb v. P.U.C.O.*, 281 U.S. 470, 479 (1930); *Heiser v. Woodruff*, 327 U.S. 726, 735 (1946).

Conversely, the full faith and credit recognition of the judgments of another court of the United States is a matter of right, of *constitutional right*, "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." United States Constitution, Art. IV, §1 and Art. VI, Clause 2. A judgment of a United States Court warrants "not some, but full credit" in the courts of every other state. *Davis v. Davis*, 305 U.S. 32, 39-40 (1938).

Full faith and credit is a cornerstone, fundamental to the federalism of the United States Government. The full faith and credit clause has been characterized as a part of the "federal system", "a nationally unifying force" making each state "an integral part of a single nation" wherein judgments "are given nationwide application." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439 (1943). It embodies a "unifying principle" to "coordinate administration of justice throughout the nation" and "unify all of the courts." *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935); *Hughes, Admr. v. Fetter*, 341 U.S. 609.

612 (1951); *Americana of Puerto Rico, Inc. v. Kaplus*, 368 F.2d 431, 438 (3rd Cir. 1966), *cert. denied* 386 U.S. 943 (1967).

> "These consequences flow from the clear purpose of the full faith and credit clause to establish *throughout the federal system* the salutary principle of the common law that a *litigation once pursued to judgment shall be as conclusive* of the rights of the parties in every other court as in that *where the judgment was rendered*, so that a cause of action merged in a judgment in one state is likewise merged in every other. The full faith and credit clause like the commerce clause thus *became a nationally unifying force.* It *altered the status of the* several *states* as independent foreign sovereignties, each free to ignore rights and obligations created under the laws or established by the judicial proceedings of the others, by making *each an integral part of a single nation*, in which rights judicially established in any part are *given nationwide application.* * * * Because there is a full faith and credit clause a defendant may not a second time challenge the validity of the plaintiff's right which has ripened into a judgment and a plaintiff may not for his single cause of action secure a second or a greater recovery." 320 U.S. at 439-40. (Emphasis added)

This Court has said that full faith and credit "substituted a command for the earlier principles of comity" and "ordered submission by one State even to hostile policies reflected in the judgment of another State," because the federal system "demanded it." The requirements of full

faith and credit "are exacting, if not inexorable." *Estin v. Estin*, 334 U.S. 541, 546 (1948).

And "the federal purpose of the clause makes this [United States Supreme] court * * * the 'final arbiter'" of its application. *Johnson v. Muelberger*, 340 U.S. 581, 585 (1951); *Morris v. Jones, Dir. of Ins.*, 329 U.S. 545, 551-52 (1947).

These concepts are more fundamental to "federalism" than the non-interference principles discussed in *Younger, supra*, at 44 and *Huffman, supra*, at 601 and 606. Federalism should certainly favor a defendant who has obtained a fully litigated judgment in one United States jurisdiction and he should be entitled to be free from State Court litigation of the same cause of action by the same plaintiff a second time.

All writs authority and anti-injunction exception. Where, as here, a Federal Court judgment is sought to be protected, federal statutes have provided ample federal jurisdiction to "issue all writs necessary and appropriate in aid of" that judgment and have specifically excepted from the anti-injunction statute jurisdiction to protect or effectuate it. 28 U.S.C. §§1651 and 2283.

This jurisdiction has been exercised in the relitigation cases which the District Court followed in granting injunctive relief.

The Federal Court power to enjoin State court "relitigation of cases and controversies fully adjudicated by" such courts has long been recognized by court decision. After denial of this jurisdiction in *Toucey v. New York Life Insurance Co.*, 314 U.S. 118 (1941), Congress amended 28 U.S.C. §2283[2] specifically to overule the *Toucey* holding.

2. 1948 revision of Title 28 U.S. Code; House Report No. 308, 80th Congress, 1st Session pp. 1-7, A181-82; Senate Report No. 1559, 80th Congress, 2nd Session pp. 1-2.

Finality of the District of Columbia judgment is confirmed by the rulings of the Appellate and United States Supreme Courts in *Brown v. Lamb*, 414 F.2d 1210 (1969) and 397 U.S. 907 (1970). The injunctive relief presently sought is, therefore, ancillary to enforcing and effectuating that judgment. *Toucey v. N.Y. Life Ins. Co., supra*, 141-154 (J. Reed Dissenting Opinion); *Steffel v. Thompson*, 415 U.S. 452, 477-78 (J. White Concurring) (1974); *Mitchum v. Foster*, 407 U.S. 225, 236 (1972).

Prior to 1948, the anti-injunction statute, 28 U.S.C., 1940 ed. §379, did not provide the exceptions "in aid of its jurisdiction" nor "to protect or effectuate its judgments." These were added at the time of the 1948 revision of the Judicial Code to reverse *Toucey*. Congress adopted the "vigorous dissenting opinion" of the *Toucey* case, authored by Justice Reed. According to him, the principle of the "relitigation exception", which was enacted by §2283, was "to avoid relitigation and *forced reliance on res judicata.*" (Emphasis added) 314 U.S. at 146.

Until the *Toucey* decision and since the amendment of §2283, the relitigation exception has been regularly and fully recognized.[3] *Steffel v. Thompson, supra*, 477; *Mitchum v. Foster, supra*, 236; *Woods Exploration and Producing Co., Inc. v. Aluminum Co. of America*, 438 F.2d 1286, 1312 (5th Cir. 1971), *cert. denied* 404 U.S. 1047 (1972).

In *Steffel, supra*, this Court recognized "'that the Toucey Rule is gone, and that to protect and effectuate its judgment a federal court may enjoin relitigation in a state court.'" It saw "no reason * * * to hold that the federal plaintiff must always rely solely on his plea of res judicata in the state courts. * * * it would not seem improper to

3. The relitigation exception of §2283 is reinforcement for the "all writs" statute, 28 U.S.C. §1651.

enjoin local prosecutors who refuse to observe adverse federal judgments." 415 U.S. at 477-78.

The authority "to effectuate its judgments" is a specific exception to the anti-injunction statute, 28 U.S.C. §2283. Its restoration and continued vitality are beyond question. The right to be free from the burden of relitigation and free from being relegated solely to the defense of res judicata in the state courts furnish the equitable considerations necessary to support an injunction.

Additional jurisdictional authority arises from the fact that full faith and credit is a constitutional right federally protected under 42 U.S.C. §1983. Relief which it provides by a suit in equity "falls within the 'expressly authorized' exception of" 28 U.S.C. §2283. *Mitchum v. Foster, supra,* at 242-43.

Full faith and credit for a fully litigated judgment should be recognized as a constitutional right apart and different from res judicata, as a basic footing to the federalism of the United States Government, as a protection against relitigation and as a proper subject for injunctive jurisdiction of the Federal Courts.

2. The Constitutional Right of Full Faith and Credit Entitles a Final Judgment of the United States District Court for the District of Columbia, Which Precludes Further Litigation on the Same Claim Between the Same Parties in That Jurisdiction, to the Same Fully Preclusive Effect in the Courts of Every State of the United States. Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943).

As would be the case in any jurisdiction in the country, the final judgment entered December 22, 1967 in the District of Columbia and affirmed on appeal, is a complete bar to

any further action in the District of Columbia by Brown against Lamb or Dispatch, Inc. on that claim. If its "effect" were any less, it is certain that Brown would be in the District of Columbia Courts rather than the Lucas County, Ohio Court. His renewed efforts in the Ohio case tell us that he knows this. *Pauling v. McNamara,* 331 F.2d 796 (C.A. D.C. 1963); *Westgate-Sun Harbor Co. v. Watson,* 206 F.2d 458 (C.A. D.C. 1953); *Higginson v. Schoeneman,* 190 F.2d 32 (C.A. D.C. 1951); *Woods v. Cannaday,* 158 F.2d 184 (C.A. D.C. 1946).

In *Pauling v. McNamara, supra,* the Court of Appeals for the District of Columbia announced the holding that judgment *on motion to dismiss,* granted and affirmed in an earlier case, constituted a final conclusive judgment and "res judicata" in the later case which stated the same claims. 331 F.2d at 797-98.

In *Woods v. Cannaday, supra,* that same court applied the doctrine of res judicata to a *default judgment* and to *all points* which might have been litigated. In the District of Columbia, as in all courts:

> "* * * there must sometime be an end to litigation, not only in the interest of the adverse party who should not be vexed twice or thrice or even more times for the same cause, but also in the interest of the state in settled law and legal relations and that of courts and litigants in an orderly judicial process which would be seriously jeopardized by unnecessary overcrowding of already crowded dockets." 206 F.2d at 462.

Comparably, the December 22, 1967 judgment on motion for judgment n.o.v., after full trial and appeal would be final and conclusive. This is the District of Columbia effect which must be given "not some, but full credit" by the Ohio Court. *Davis v. Davis,* 305 U.S. 32, 39-40 (1938);

Embry v. Palmer, 107 U.S. 3, 10 (1882) (District of Columbia judgment enforced in Ohio).

Because there is a full faith and credit clause a defendant [or plaintiff] may not a second time challenge the validity of the plaintiff's [or defendant's] right which has ripened into a judgment. Its finality must be recognized "to the same extent in every other" state. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439-40, 438 (1943); *Morris v. Jones*, 329 U.S. 545, 551 (1947); *Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 276-77 (1935).

By reason of the final judgment, no further legal proceedings on the alleged cause of action can be maintained in the District of Columbia. The full faith and credit clause permits nothing less in the State of Ohio.

3. The Younger-Huffman Holdings Do Not Apply to All Civil Cases, Particularly Where Their Principles Conflict With the Very Concept of Federalism and Comity Which Those Decisions Were Intended to Support and Fortify. Younger v. Harris, 401 U.S. 37 (1971); Huffman v. Pursue, 420 U.S. 592 (1975).

The Court of Appeals held that "the district court should have exercised equitable restraint and left this litigation for resolution in the State Courts of Ohio" citing *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975) and *Younger v. Harris*, 401 U.S. 37 (1971). This misconceived and incorrectly applied the principles of comity and federalism espoused in these two decisions. They apply to pending criminal or quasi-criminal cases. The full faith and credit principles of federalism recognized in *Magnolia Petroleum Co. v. Hunt, supra*, apply to out-of-state, litigated, civil judgments. *Magnolia* commands that every such final judgment be given the same full faith and credit in every state of the United States that it has in the court where it is rendered. 28 U.S.C. §1738.

Younger, p. 44, made clear that the "comity" and "Our Federalism" which it sought to protect were the freedom of the states "to perform their separate functions in their separate ways." 401 U.S. at 44. *Huffman* echoed this concept many times and recognized in 28 U.S.C. §2283 "an interest in permitting state court to try state cases." 420 U.S. at 600.

However, this is far different from permitting state courts to relitigate and retry federal cases which have gone to a final judgment and are preclusive of any further litigation in the jurisdiction where rendered. This fits under the third exception of 28 U.S.C. §2283 granting to Federal Courts jurisdiction to enjoin State Court suits to protect and effectuate federal judgments. Neither *Younger* nor *Huffman* addressed or discussed this facet of federalism.

Younger involved an effort to enjoin a criminal prosecution. *Huffman* dealt with a quasi-criminal proceeding, characterized as a "civil counterpart" of *Younger*. 420 U.S. at 611.

The instant case presents an entirely civil proceeding, a claim for money judgment denied by a United States District Court after complete and exhaustive litigation in that Court. The exhaustion requirement of *Huffman* has been fully met.

The federal principles significant here, and followed by the District Court are (1) that the United States courts have jurisdiction to effectuate and protect their judgments (28 U.S.C. §2283, Third Exception), and (2) that the full faith and credit which is due a District of Columbia judgment is the same credit (complete preclusion) that it has in the jurisdiction where rendered. 28 U.S.C. §1738.

Magnolia Petroleum teaches that the full faith and credit clause "became a nationally unifying force. It altered the status of the several states * * * by making each an integral part of a single nation, in which rights judicially established in any part are given nation-wide application." 320 U.S. at 439.

In this context, *Magnolia* pointed out that the Constitution commanded a state to enforce a judgment for out-of-state taxes, for a gambling debt or for wrongful death even though those actions could not be maintained under the law of the enforcing state. A defendant having earned a defense judgment should be given the same right. *Younger* and *Huffman* are determinative in the sphere of pending, unadjudicated, criminal and quasi-criminal cases.

Magnolia is controlling in the sphere of finally adjudicated civil cases to avoid relitigation. This was recognized by the District Court but denied by the Court of Appeals and as a significant issue in interstate relations, it should apropriately be considered finally determined by this Court.

CONCLUSION

This case presents important constitutional questions of (1) full faith and credit for a final, fully-litigated, civil judgment, (2) the critical distinction between constitutional full faith and credit and doctrinaire res judicata, (3) the importance that a judgment once rendered be given nation-wide effect and (4) the jurisdiction of federal courts to enjoin state court litigation to protect and effectuate a federal court judgment and prevent relitigation of such a judgment.

As the "final arbiter" of the application of the full faith and credit clause, this case presents appropriate issues and questions which should be determined by this Court.

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APPENDIX

OPINION AND ORDER OF THE DISTRICT COURT

(Filed September 2, 1975)

Civil Action No. C 74-378

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAMB ENTERPRISES, INC., *et al.*,
Plaintiffs,

vs.

THE HONORABLE GEORGE N. KIROFF, *et al.*,
Defendants.

OPINION AND ORDER

WALINSKI, *J*:

In this "full faith and credit" case, this Court is asked to end litigation which was begun sixteen years ago, which has been fought and tried in the federal district court in the District of Columbia to the United States Supreme Court, which has also been through the courts of the State of Ohio to the Ohio Supreme Court twice, and which now threatens to be tried all over again, this time in the Common Pleas Court of Lucas County. This Court is understandably somewhat diffident about being drawn into this seemingly limitless lawsuit, for it seems that no order entered in this dispute goes without question, delay, reconsideration, rehearing and, ofttimes, revision or reversal.

Still, the Court's power has been invoked; rights have been asserted under the federal constitution; and evidence has been adduced—all of which require a decision.

FINDINGS OF FACT

Brown first sued Lamb in Lucas County, Ohio, in 1959. He sought to recover compensation for legal services rendered in connection with proceedings before the Federal Communications Commission for the renewal of a license to operate a television station in Erie, Pennsylvania. These proceedings stretched from 1954 to 1957 during which Brown is said to have rendered extensive legal services on behalf of Lamb, who had been assailed as being a member of the Communist Party and whose qualifications to hold a broadcast license were said to have been thereby thrown into question. The Ohio lawsuit dragged on for nearly four years without coming to trial.

However, in 1963 Brown began again on a new front in the District of Columbia. Apparently, while sojourning there, Lamb was served with process; and a suit raising exactly the same claims was begun in the United States District Court for the District of Columbia. That court denied a motion to quash service on November 12, 1963. It appears that Lamb somewhat frequently transacted business in Washington, and thus that district was not an inappropriate forum for Lamb to defend in.

After this motion to quash was decided, the Lucas County Court placed the cause on its "inactive list until further order of [the] court." No reason was given, but it may be inferred that Brown had elected to proceed with his claims in the federal court and had so advised the Ohio Common Pleas Judge. This election must be presumed to have been knowing and intelligent even though Brown, a lawyer, knew that he also faced a severe statute of limita-

tions problem in the District of Columbia which he did not have in Ohio.

The case in Washington proceeded to trial in the latter part of October, 1967; and a jury returned a verdict in favor of Brown on November 1, 1967, awarding him $400,000 in damages. However, on December 22, 1967, Judge Matthews of the federal district court entered judgment *non obstante veredicto* in favor of Lamb. It appears that the judgment n.o.v. was granted on the basis that Brown had failed to adduce sufficient evidence as to facts which would take the case out of the D. C. Statute of Limitations, 12 D.C. Code, §301(7) (1967). Brown had contended that Lamb should be equitably estopped from asserting the bar of the statute because Lamb had lulled Brown into inaction by assurances which were said to have continued over a period of several years.

In any event, Brown appealed the judgment n.o.v. to the United States Court of Appeals for the District of Columbia Circuit which affirmed the lower court. *Brown v. Lamb*, 414 F.2d 1210 (D.C. Cir. 1969). The United States Supreme Court denied certiorari, 397 U.S. 907 (1970).

During the conduct of the Washington lawsuit, Brown was pressed in both fora to proceed with both lawsuits. At one point the federal judge required Brown to go forward in federal court or dismiss his case there and noted the problem of the statute of limitations. In Ohio Brown's case was listed for dismissal several times, was activated and placed on pretrial lists and was again placed on the inactive list January 29, 1968. Lamb also moved several times to get the case dismissed but did not prevail.

Finally, after the federal judgment had been entered, the case in Ohio was dismissed inadvertently by Judge Kiroff on March 24, 1969. He was then asked to vacate

his dismissal order, and he did so October 5, 1970, saying he had not intended that the Lamb case be dismissed but that the parties should consult *LaBarbera v. Batsch*, 10 Ohio St. 2d 106 (1967), to explore the applicability of the Washington judgment which by then had become final.

Brown moved for reconsideration of the vacation order, and a visiting judge set it aside on March 6, 1972, and ordered the case dismissed. This last order was then appealed to the Court of Appeals for Lucas County which affirmed that order. Brown then appealed to the Ohio State Supreme Court which reversed the Court of Appeals[1] and sent the case back to the Common Pleas Court to be tried. In so doing, the court said:

> "In our opinion, the trial court abused its discretion and committed error prejudicial to the appellant in suspending its order of October 5, 1970; errors which occurred in subsequent proceedings could not have transpired but for that abuse. The record establishes that the order vacating the entry of dismissal was properly entered and should not have been reheard by the assigned judge.
>
> "We also note that the case of *LaBarbera v. Batsch* (1967), 10 Ohio St. 2d 106, 227 N.E. 2d 55, is distinguishable upon its facts from the instant case, is not dispositive of the issue involving *res judicata* and should not have been relied upon for that purpose below.

1. It should be noted that the Court of Appeals failed to rule on Lamb's argument that the case was barred by the doctrine of res judicata. Therefore, it would appear that the res judicata issue was not actually before the Ohio Supreme Court and that any comment by the Supreme Court on that issue was more in the nature of obiter dicta. Nevertheless, its comments thereon undoubtedly had some influence on Judge Kiroff on that issue.

> "The judgment of the Court of Appeals is reversed and the cause is remanded to the trial court for further proceedings." *Brown v. Lamb*, 36 Ohio St. 2d 8, 11 (1973).

Judge Kiroff has since denied a motion to dismiss the complaint. Moreover, he has granted a motion to add new parties, has permitted an amendment of the complaint, has permitted discovery to proceed, and has indicated that the cause will proceed to trial. Lamb, however, has since filed the present suit asking this Court to enjoin any further proceedings in the state court and to enjoin permanently the case from being tried therein.

At the hearing on the motion for a preliminary injunction, this Court received the documentary evidence establishing the above facts. Pursuant to Rule 65(a)(2), Federal Rules of Civil Procedure, the hearing on the preliminary injunction was also consolidated with trial on the merits, upon the stipulation of the parties.

The Court finds that Brown's election to proceed to trial in Washington, while urging the Ohio court to hold his case inactive, was done with a purpose to force relitigation in Ohio if he lost in Washington and that the present Ohio suit constitutes a relitigation of the federal suit.

CONCLUSION OF LAW

Jurisdiction of this Court is properly invoked pursuant to 28 U.S.C., § 1343(3), and venue is proper in this Court. Plaintiffs claim a right to relief under 28 U.S.C., § 1738, and 42 U.S.C., § 1983.

There is no question that the Full Faith and Credit Clause, U. S. Constitution, Art. IV, § 1, and its implementing statute, 28 U.S.C., § 1738, create rights which plaintiff may assert.

> "When a state court refuses credit to the judgment of a sister state because of its opinion of the nature of the cause of action or the judgment in which it is merged, an asserted federal right is denied * * *." *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 443 (1943).[2]

Section 1983 requires that a plaintiff show:

a) the denial of a federally guaranteed right,

b) by someone acting under color of state law.

Monroe v. Pape, 365 U.S. 167 (1961); *Ouzts v. Maryland Nat'l Ins. Co.*, 470 F.2d 790 (9th Cir. 1972).

Therefore, since "state action" under § 1983 includes judicial action, *Mitchum v. Foster*, 407 U.S. 225, 240-2 (1972), this Court concludes that § 1983 is an appropriate basis on which to raise a claim that the courts of a state are denying rights asserted under the Full Faith and Credit Clause and § 1738. Moreover, there is no question that a judgment of the federal district court sitting in the District of Columbia is entitled to the same full faith and credit as would be due the judgment of a court of any state. *Embry v. Palmer*, 107 U.S. 3 (1883); *Thompson v. D'Angelo*, ... Del. ....., 320 A.2d 729 (1974).

It is further beyond dispute that § 1983 authorizes injunctions to prevent the denial of rights guaranteed by federal law, *Mitchum v. Foster, supra*, at least in some instances. However, where a federal court is asked to enjoin proceedings in a state court, important considerations of comity and federalism come into play and counsel restraint. Indeed, 28 U.S.C., § 2283, the anti-injunction statute, commands as much.

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2. *See also West Side Belt R. Co. v. Pittsburgh Construction Co.*, 219 U.S. 92 (1911), and *Titus v. Wallick*, 306 U.S. 282 (1939).

In *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the Supreme Court held that the requirements of *Younger v. Harris*, 401 U.S. 37 (1971), also apply when a federal court is asked to enjoin at least one kind of state *civil* proceeding. In *Pursue* the district court had been asked to enjoin a state civil nuisance proceeding[3] which the Supreme Court concluded was "more akin to a criminal prosecution than are most civil cases." *Huffman v. Pursue, supra*, at 604. The Court further said:

> "For the purposes of the case before us, however, we need make no general pronouncements upon the applicability of *Younger* to all civil litigation." *Id.* at 607.

Nevertheless, "informed by relevant principles of comity and federalism," *id.*, this Court feels that *Younger* and *Pursue* require a strong and compelling showing of the pressing need for immediate federal relief whenever *any* state judicial proceeding is sought to be enjoined. This is so because the competency of state courts to vindicate federally guaranteed rights, which the court in *Pursue* was at pains to underline, requires that an important federal right be almost certainly in jeopardy of immediate loss by the very act of continuing the state proceeding in order for the federal injunction to issue.

Here this Court finds that kind of great and immediate danger to exist. Firstly, there can be no doubt whatever that precisely the same cause of action is involved in the Ohio proceeding as was involved in the Washington case. Secondly, if the Full Faith and Credit Clause has any meaning at all, it is that litigants cannot use the federal system to force their adversaries to defend against the same claims in seriatim proceedings in different fora after one

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3. The State of Ohio was seeking to use the public nuisance statute, § 3767.01, *et seq.*, Ohio Revised Code, to close a movie theatre for showing motion pictures alleged to have been obscene.

has already gone to judgment, while at the same time attempting to shelter themselves behind federal judicial commitments to constitutionally commanded principles of comity and federalism. Permitting such relitigation in the name of federalism strips too much away from the bark of one of the most important of constitutional provisions: one which helped change our country from a loose confederation of nearly completely sovereign and independent states to a truly unified nation of shared sovereignties with mutual obligations. *Magnolia Petroleum Co. v. Hunt, supra,* at 439-440.[4]

The existence of a right to an appeal of any Common Pleas judgment, it should be noted, is clearly an inadequate remedy in this case to vindicate the federal right; for it is the very right to avoid being put to such a showing in such a duplicative process which the Full Faith and Credit Clause embraces. The failure of the Ohio Court of Appeals and the Ohio Supreme Court to vindicate Lamb's res judicata claim, especially the Supreme Court's suggested denial of it, surely show the inadequacy of the state appellate remedies under the unique posture of this case. This would be so here, even if the full faith and credit right were limited to being properly asserted only on appeal after a second trial, which it is not. Thus, it cannot be said that there is any preempting the state appellate procedure of the kind which defendants correctly say has been condemned in *Atlantic Coast Line Rd. v. Engineers,* 398 U.S. 281 (1970).

It is thus very clear that this Court shares plaintiffs' view that this lawsuit presents a "relitigation" case thus

4. The ability to defend against successive lawsuits, i.e., the extent of his personal resources etc., of the one who asserts the full faith and credit right is not a factor here. The poverty or affluence of the plaintiff herein is therefore not dispositive of any issue in this case.

coming within a specific exception to the anti-injunction statute, 28 U.S.C., § 2283. That section states:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, *or to protect or effectuate its judgments.*" [*Emphasis added.*]

Defendants argue that this Court may not reach the res judicata issue and hence the relitigation claim of plaintiffs for two reasons:

> (a) that the state appellate courts already have ruled as an alternate basis against res judicata and plaintiffs failed to appeal that ruling to the United States Supreme Court; and
>
> (b) the Washington judgment, being based on the statute of limitations, is one otherwise than on the merits and therefore it is only entitled to recognition as barring the remedy within the District of Columbia.

Before dealing with these contentions, it is necessary to decide whether the current proceedings in Common Pleas Court constitute relitigation so as to bring the present within the last exception in § 2283.

Where a suit, raising precisely the same claims as were decided in a previously adjudicated case whose judgment is final between precisely the same parties, is sought to be litigated, the second lawsuit constitutes relitigation and comes within the last exception of § 2283 and the protection of the Full Faith and Credit Clause. *See, e.g., Woods Exploration & Producing Co. v. Aluminum Co. of Amer.,* 438 F.2d 1286, 1312-13 (5th Cir. 1971); *Johnson v. Radford,* 449 F.2d 115 (5th Cir. 1971). *See also Jackson v. Carter Oil Co.,* 179 F.2d 524 (10th Cir. 1950), *cert. denied,* 340 U.S. 812

(1951). *Cf. American Mannex Corp. v. Rozzands*, 462 F.2d 688 (5th Cir. 1972), *cert. denied*, 409 U.S. 1040 (1973).

Therefore, this Court concludes as a matter of law that the pending case before Judge Kiroff is a relitigation of the District of Columbia lawsuit and comes under the last exception in § 2283. The Court further concludes that there are no equitable or other reasons why the pending suit should not be barred, but that there are such reasons for halting further litigation. Brown elected to go to trial in Washington; having tried and failed, he cannot now try again in Ohio.

Turning now to defendants' contentions, it is true that the Ohio Supreme Court "noted" that a previous decision by that court did not dispose of the res judicata claim. In view of the Court of Appeals' failure to decide the res judicata claim, and in view of the Supreme Court's decision on the abuse of discretion issue, it would wrench all meaning from language to regard the comment on the *LaBarbera* case as a clear holding on that issue. Even according it that dignity, however, it is clear that it left Lamb with no right to an appeal to the U.S. Supreme Court as Bullington had in *Angel v. Bullington*, 330 U.S. 183, 189 (1947). This is so because where a decision might have been *either* on a federal ground (equating *arguendo* res judicata with full faith and credit as held by *Woods Exploration & Producing Co., supra*), or on a state ground (i.e., it was an abuse of discretion for the visiting judge to set aside the vacate order), and the state ground is sufficient to sustain the judgment; the Supreme Court has held that it will not review the federal ground on appeal as of right under 28 U.S.C., § 1257, unless the state ground is too insubstantial or insufficient. *Durley v. Mayo*, 351 U.S. 277 (1956). Moreover, the Supreme Court will not decide constitutional issues under § 1257 raised for the first time in the U. S.

Supreme Court on review of a state court decision. *Cardinale v. Louisiana*, 394 U.S. 437 (1969). Thus, on the one hand, Lamb could not have gotten review since the Ohio Supreme Court's state ground cannot be said to be too insubstantial, if one considers the federal claim to have been raised;[5] and on the other hand, even if it isn't considered to have been raised, Lamb could not have done so for the first time in the U. S. Supreme Court. Either way Lamb could not have gotten review in the U. S. Supreme Court. Therefore, it cannot be said that the federal question now raised by this lawsuit is foreclosed by a prior state court determination.

As to the second defense contention that a dismissal on the statute of limitations is one otherwise than on the merits, this Court feels that plaintiffs have made a compelling showing that, under the District of Columbia decisions, Brown's dismissal must be viewed as being on the merits in the District of Columbia and therefore, is entitled to full faith and credit as a bar to this Ohio lawsuit. *See* Reply Brief of Plaintiffs, filed December 4, 1974, 25-32. Within the unique facts of this case, the merits of Brown's cause of action were finally determined and put to rest with the final judgment of the Federal District Court in Washington.[6]

In reaching this conclusion, this Court is also guided by the reasoning used by the court in *Williams v. Ocean Transport Lines, Inc.*, 425 F.2d 1183, 1187-1190 (3rd Cir. 1970). It is true that in that case the second litigation in-

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5. Whether a federal question was sufficiently and properly raised in a state court is itself ultimately a federal question as to which a federal court is not bound by the state decision. *Street v. New York*, 394 U.S. 576 (1969).

6. This Court expressly rejects the reasoning and the result reached in *Brand v. Brand*, 116 Ky. 785, 76 S.W. 868 (1903).

volved a federal question, i.e., an unseaworthiness claim under the Jones Act and the amount of damages obtainable thereunder. However, the interest of Lamb in avoiding relitigation of the Washington lawsuit raised a federal question, as to which the courts of Ohio and this Court are not wholly bound by District of Columbia determinations on dismissals on the statute of limitations. *See Riley v. New York Trust Co.*, 315 U.S. 343, 349 (1942). *And cf. Durfee v. Duke*, 375 U.S. 106, 116 (1963). Therefore, given the right under the Full Faith and Credit Clause to avoid relitigation, this Court has concluded for itself the nature of the res judicata effect to be accorded to the decision of the federal court dismissing Brown's claims. *Williams v. Ocean Transport Lines, supra,* at 1189-1190.

Accordingly, for the foregoing reasons, it is

ORDERED that defendants be and hereby are permanently enjoined from prosecuting, hearing, adjudicating or otherwise continuing with the proceedings in the case of *Brown v. Lamb, et al.*, Case No. 186753, now pending in the Common Pleas Court of Lucas County, Ohio, and that judgment be entered herein in favor of plaintiffs.

/s/ NICHOLAS J. WALINSKI
United States District Judge

JUDGMENT OF THE DISTRICT COURT

(Filed September 2, 1975)

Civil Action No. C 74-378

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

LAMB ENTERPRISES, INC., *et al.*,
Plaintiffs,

vs.

THE HONORABLE GEORGE N. KIROFF, *et al.*,
Defendants.

JUDGMENT

This action came on for (hearing) before the Court, Honorable Nicholas J. Walinski, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered.

It is Ordered and Adjudged defendants permanently enjoined from prosecuting, hearing, adjudicating or otherwise continuing with the proceedings in the case of *Brown v. Lamb, et al.*, Case No. 186753, now pending in the Common Pleas Court of Lucas County, Ohio, and that judgment is entered in favor of plaintiffs.

/s/ NICHOLAS J. WALINSKI
United States District Judge

OPINION OF THE COURT OF APPEALS

(Filed January 31, 1977)

Nos. 75-2450-54

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAMB ENTERPRISES, INC., *et al.*,
Plaintiffs-Appellees,

v.

JUDGE GEORGE N. KIROFF, *et al.*,
Defendants-Appellants.

APPEAL from the United States District Court for the Northern District of Ohio, Western Division.

Before PHILLIPS, *Chief Judge*, and MCCREE and ENGEL, *Circuit Judges.*

PHILLIPS, *C. J.*, delivered the opinion of the Court, in which ENGEL, *J.*, concurred. MCCREE, *J.*, (p. 20) filed a separate concurring opinion.

PHILLIPS, *Chief Judge.* The Court of Common Pleas of Lucas County, Ohio, dismissed a suit filed by Russell Morton Brown to recover attorney's fees from Lamb Enterprises, Inc. (Lamb). In *Brown v. Lamb*, 36 Ohio St.2d 8 (1973), the Supreme Court of Ohio reversed and remanded the case to the State trial court for further proceedings. In its opinion in the present case, reported at 399 F.Supp. 409 (1975), the District Court enjoined the State trial judge from proceeding with the disposition of the case as directed by the Supreme Court of Ohio. We reverse on the ground of unwarranted interference by the United States District

Court in litigation over which State courts have jurisdiction. We hold that the District Court should have exercised equitable restraint and left this litigation for resolution in the State Courts of Ohio. *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Younger v. Harris*, 401 U.S. 37 (1971); *Louisville Area Interfaith Committee v. Nottingham Liquors*, 542 F.2d 652 (6th Cir. 1976).

I.

The suit was filed in the State court in 1959 to recover compensation claimed by Brown for legal services rendered in connection with proceedings before the Federal Communications Commission for the renewal of a license to operate a television station in Erie, Pennsylvania.

While the Ohio action was pending in the Court of Common Pleas, Brown filed a second action for the same attorney's fees and against the same defendants in the United States District Court for the District of Columbia. The District of Columbia action was filed after it ostensibly was barred by the three-year statute of limitations established by District of Columbia Code § 12-301(7), but Brown pleaded facts that he claimed avoided the operation of the statute. Jurisdiction was established in the District of Columbia and on November 1, 1967, a jury returned a verdict for Brown for $400,000. On December 22, 1967, District Judge Matthews of the federal district court granted a defense motion for judgment n.o.v. on the ground that the District of Columbia action was commenced after the expiration of the District of Columbia's statute of limitations, and Brown had not produced evidence of "a new or continuing contract [for attorney's fees] . . ." to take the case out of the statute of limitations. Brown appealed the District Court judgment n.o.v. The Court of Appeals for the District of Columbia affirmed. *Brown v. Lamb*,

414 F.2d 1210 (D.C. Cir. 1969). The Supreme Court denied certiorari. 397 U.S. 907 (1970).

While the District of Columbia action was proceeding through the federal courts, the Ohio Common Pleas Court, sua sponte, kept the Ohio action in an inactive status. Apparently through inadvertence, however, the Ohio case was dismissed for want of prosecution on March 24, 1969. Brown, already unsuccessful in the District of Columbia litigation, acted to have the erroneous dismissal remedied, and on October 5, 1970, the case was reinstated. Lamb then moved the Common Pleas Court for reconsideration of the reinstatement. On March 6, 1972, a visiting judge ruled that the case should not have been reinstated and vacated the order of reinstatement, stating as grounds both want of prosecution and that the District of Columbia judgment n.o.v. barred the Ohio action on principles of *res judicata*. Brown appealed this last order of dismissal. The Ohio Court of Appeals, without ruling on the *res judicata* question, affirmed the trial court's judgment of dismissal. The Supreme Court of Ohio, in a per curiam opinion reported at 36 Ohio St. 2d 8 (1973), reversed the Court of Appeals and remanded the case to the Common Pleas Court for further proceedings.

On remand, Lamb filed an "Amended Motion to Dismiss," again insisting that the Ohio Common Pleas action had been abandoned and that the defendants faced "double vexation" in the Ohio courts. This motion was denied by Judge George N. Kiroff of the Common Pleas Court of Lucas County, Ohio.[1] Judge Kiroff thereafter granted leave for Brown to amend his complaint, to add new parties and to proceed with discovery. Judge Kiroff indicated that the Ohio action would be readied for trial.

1. Judge Kiroff, and other officials of the Court of Common Pleas of Lucas County, Ohio, are named defendants in the present action.

On September 13, 1974, Lamb and other defendants in the state court initiated in the District Court the action from which this appeal arises. Invoking federal court jurisdiction pursuant to 28 U.S.C. § 1343(3), and alleging a cause of action for deprivation of civil rights under 42 U.S.C. § 1983, Lamb asked the District Court to enjoin the reinstated proceedings in the Ohio state court on the ground that any further prosecution of the state court action would violate the full faith and credit due the District of Columbia judgment.

The District Court, citing *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), determined that the full faith and credit clause of the U.S. Constitution and its implementing statute, 28 U.S.C. § 1738,[2] created rights which may be asserted via a civil rights action under § 1983. The Court found that Lamb had presented an appropriate case for federal court injunction of purely civil state court proceedings, and enjoined further proceedings in the Ohio suit so as to give Lamb the protection of the full faith and credit clause. Judge Kiroff, Brown and three other defendants appeal the order of the District Court permanently enjoining them from continuing with the reinstated action for attorney's fees in the Ohio Court of Common Pleas.

II.

Appellants' principal contention on this appeal is that under *Younger v. Harris*, 401 U.S. 37 (1971), and cases since which purport to extend the analysis of *Younger* into

2. 28 U.S.C. § 1738 reads in part:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

the context of federal court injunction of state *civil* proceedings, the District Court injunction was an unwarranted exercise of federal supervision over the state courts of Ohio. Specifically, appellants say that the District Court correctly determined to apply *Younger* analysis to the case at hand, but incorrectly stated the test set down by the Supreme Court in *Younger* and thus failed to consider whether the state court action had been initiated in bad faith or with intent to harass as it must be, according to appellants, before a federal court injunction would be appropriate.

Appellees argue in the alternative that *Younger-Huffman*[3] analysis should not apply, but that "extraordinary circumstances, bad faith and harassment" are present sufficient to satisfy *Younger-Huffman* and to make this a proper case for federal court injunction. The District Court undertook to apply *Younger-Huffman* but reached the alternative conclusion urged by appellees—that this is the exceptional situation wherein federal intervention is appropriate. We agree, in line with *Inter-Faith Committee v. Nottingham, supra*, 542 F.2d 652 (6th Cir. 1976), and the decisions of this and other circuits cited therein, that *Younger-Huffman* analysis is the correct approach to determining whether the injunction should have issued in this case. We hold that the District Court erred, however, in its characterization and application of the *Younger-Huffman* test.

III.

This circuit has joined the growing number of circuits that have looked to *Younger* as a guide for determining when a federal court may properly enjoin state civil proceedings. *See Inter-Faith Committee v. Nottingham, supra*, 542 F.2d 652 (6th Cir. 1976), and Sixth Circuit cases cited

3. *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), discussed *infra*.

therein. To date, the Supreme Court has sanctioned this development in the context of a "quasi-criminal" civil nuisance proceeding, but the court has made ". . . no general pronouncements upon the applicability of *Younger* to all civil litigation." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 607 (1975). In support of the decision to apply *Younger* to appraise the propriety of federal court injunction of state civil proceedings, this court stated in *Inter-Faith, supra*:

> Although the Supreme Court has left open the applicability of *Younger-Huffman* doctrine to general civil litigation, *Huffman, supra*, 95 S.Ct. at 1208, 1209, bolstering us in our application of *Younger-Huffman* doctrine to bar federal court interference with pending state court civil proceedings are this court's oft-expressed reluctance to interfere in state court proceedings, *see, e.g., Littleton v. Fisher*, 530 F.2d 691, 693 (6th Cir. 1976), *King v. Jones*, 450 F.2d 478 (6th Cir. 1971), *vacated as moot*, 405 U.S. 911, 92 S.Ct. 956, 30 L.Ed.2d 780 (1972), *Appalachian Volunteers, Inc. v. Clark*, 432 F.2d 530 (6th Cir. 1970), *cert. denied*, 401 U.S. 939 (1971), and other courts' application of *Younger-Huffman* doctrine to bar interference in state court civil proceedings.
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> 542 F.2d 654 (6th Cir. 1976).

Inter-Faith, decided by this court after the filing of briefs in the instant case, is dispositive of the question of whether the strict *Younger-Huffman* requirements for federal court injunctive relief should be applied to the facts here presented. In *Inter-Faith*, the state proceeding against which a federal court injunction was sought was a purely civil action for an order restraining mass picketing and marching in a labor dispute. This court, speaking through Judge Peck, stated that federal courts are reluctant to inter-

fere with state proceedings and will exercise "equitable restraint" when called on to enjoin state civil action where the parties have adequate remedy for their constitutional grievances in the state courts.

The same principles of federalism, equity and comity which underlie federal court reluctance to interfere in state criminal proceedings apply with substantial force when the federal court is asked to enjoin state civil proceedings. Although we recognize that the states may have a particularly acute interest in the unencumbered execution of their criminal laws,[4] this court finds that *Younger-Huffman* adequately embodies the principle of equitable restraint in a test which is appropriately applied to assess the wisdom of federal court injunction of state civil, as well as of state criminal proceedings.

The ruling of this court in *Inter-Faith* is in accord with the overwhelming weight of authority in other circuits. *See, e.g., Ahrensfeld v. Stephens,* 528 F.2d 193, 197 (7th Cir. 1975); *Anonymous v. Association of the Bar of the City of New York,* 515 F.2d 427, 432-34 (2d Cir.), *cert. denied,* 423 U.S. 863 (1975); *Goodrich v. Supreme Court of the State of South Dakota,* 511 F.2d 316, 317 (8th Cir. 1975); *Cleaver v. Wilcox,* 499 F.2d 940, 943 (9th Cir. 1974); *Douglas-Guardian Warehouse Corp. v. Posey,* 486 F.2d 739, 742-43 (10th Cir. 1973); *Roy v. Jones, Chief Justice,* 484 F.2d 96, 98 (3rd Cir. 1973); *American Radio Association v. Mobile Steamship Association,* 483 F.2d 1, 6-7 (5th Cir. 1973); *Duke v. State of Texas,* 477 F.2d 244, 251-52 (5th Cir. 1973), *cert. denied,* 415 U.S. 978 (1974); *Lynch v. Snepp,* 472 F.2d 769, 771-73 (4th Cir. 1973), *cert. denied,* 415 U.S. 983 (1974); *Cousins v. Wigoda,* 463 F.2d 603, 606 (7th Cir. 1972), *stay denied,* 409 U.S. 1201 (1972).

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4. *See* Stewart, J. concurring in *Younger v. Harris,* 401 U.S. 37, 55 n. 2 (1971). *See also Huffman, supra,* at 603-05.

Appellees insist that the strict standards of *Younger-Huffman* should not be applied because neither *Younger* nor *Huffman* dealt with a fully-litigated state court judgment or conviction. This argument misconceives the nature of *Younger-Huffman* analysis. It is the form of relief requested (injunction of pending state court proceedings), not the particular right being asserted (here, full faith and credit for a "final judgment") which triggers *Younger-Huffman* inquiry at the threshold. The fact ... appellees may have a "final judgment" needing federal court protection does not alter the holding of *Inter-Faith* that the *Younger-Huffman* criteria must be present before a United States District Court in this circuit may properly intervene by injunction in state civil proceedings.

IV.

In *Huffman*, Justice Rehnquist reviewed the holding of *Younger* in these terms:

> [In Younger] [w]e reaffirmed the requirement of *Fenner v. Boykin* that extraordinary circumstances must be present to justify federal injunctive relief against state criminal prosecutions. Echoing *Fenner,* we stated that a movant must show not merely the "irreparable injury" which is a normal prerequisite for an injunction, but also must show that the injury would be " 'great and immediate.' " 401 U.S., at 46. The opinion also suggested that only in extraordinary situations could the necessary injury be shown if the prosecution was conducted in good faith and without an intent to harass. *Id.,* at 54. 420 U.S. at 601.

The District Court in the case at hand made no specific findings on the question of "good faith" or the intentions of the plaintiffs in the Ohio state court action. As indicated in the foregoing quotation from *Huffman,* in the absence of

a showing of bad faith or intent to harass on the part of the state court plaintiff, the party seeking federal court injunctive intervention bears a great burden to prove the quality of injury necessary under *Younger*. Normally, it would be incumbent on the federal trial court applying *Younger-Huffman* to make a finding on the issue of good or bad faith and harassment. Here, however, the failure of the District Court to address the issue of good or bad faith does not require this court to remand for reconsideration, because by no construction of the record have appellees established the kind of "great and immediate" injury contemplated by *Younger-Huffman*.

The District Court concluded that appellees' constitutional right to full faith and credit was "in jeopardy of immediate loss by the very act of continuing the state proceeding" in Ohio. As the court explained, it is the essence of full faith and credit that appellees avoid having to "relitigate" the District of Columbia action in the courts of Ohio.

It cannot be said, on the facts of this case, that appellees are in "great and immediate" danger of losing their full faith and credit rights. It is elementary that in order for a litigant to invoke judicial protection for full faith and credit rights an appearance must be made at some point in a court to raise full faith and credit as a defense to further proceedings. As yet, there has been no judicial resolution (other than by the District Court in the present case) of the question whether the District of Columbia dismissal on statute of limitations grounds precludes the Ohio court action on principles of full faith and credit or *res judicata*. It appears to this court that appellees' real objection is not that the Ohio proceedings deny the protection of the full faith and credit clause, but that it is a violation of full faith and credit for appellees to be required to appear in the

Ohio courts and raise as a defense the full faith and credit for the District of Columbia dismissal.

The availability of adequate state court remedies is a critical factor in determining whether extraordinary injunctive relief should issue from the federal court. *See, e.g., Inter-Faith, supra,* at 3-4; *O'Neill v. Battisti,* 472 F.2d 789, 791 (6th Cir. 1972), *cert. denied sub. nom., Heitzler v. O'Neill, Chief Justice,* 411 U.S. 964 (1973); *King v. Jones,* 450 F.2d 478, 479-80 (6th Cir. 1971), *vacated as moot,* 405 U.S. 911 (1972); *Scott v. Hill,* 449 F.2d 634, 640-41 (6th Cir. 1971); *Appalachian Volunteers, Inc. v. Clark,* 432 F.2d 530, 537 (6th Cir. 1970), *cert. denied,* 401 U.S. 939 (1971); *Coogan v. Cincinnati Bar Association,* 431 F.2d 1209, 1211 (6th Cir. 1970). The Supreme Court, in *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281 (1970), stated the general rule:

> Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court. 398 U.S. at 287.

An adequate remedy at law exists in the state courts of Ohio for the appellees in this case.[5] The action pending in the state court is an action for money damages only. No preliminary or permanent equitable relief is demanded. Should the appellees be wronged by the state

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5. We are not informed of the current procedural posture of the Ohio Common Pleas Court action, but in light of the District Court's injunction, and the fact that no party has indicated to the contrary on this appeal, we are confident that appellees still have opportunity under the Ohio Rules of Civil Procedure to raise their defenses if they wish to do so. In any event, it was appellees' choice to proceed in the District Court, rather than raise their full faith and credit claim in the Ohio state courts, and they may not avoid the standards of *Younger* by failing to comply with the rules of procedure under Ohio law. *See Huffman, supra,* at 611 n. 22.

trial court's ruling on the appellees' full faith and credit claim, appeal would lie through the State appellate courts. Ohio Const. Art. IV, § 3 (Court of Appeals); Ohio Const. Art. IV, § 2 (Supreme Court of Ohio). Review of the full faith and credit claim may then be obtained in the Supreme Court of the United States. *Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 296 (1970); *Angel v. Bullington,* 330 U.S. 183, 189-90 (1947). Should a verdict be entered against them by the Court of Common Pleas, the appellees may obtain a stay of the entire judgment pending appellate court review. Ohio Rules of Civil Procedure, 62(B).[6]

It is the essence of the *Younger-Huffman* barrier to federal court intervention that state courts be free to dispose of constitutional issues which arise in civil litigation over which they have jurisdiction. *Huffman, supra,* at 609; *Inter-Faith, supra,* at 654. The District Court's analysis runs counter to this principle by authorizing the substitution of a federal forum for the state forum in every case where full faith and credit is available to a party as a defense in pending state court proceedings. By the reasoning of the District Court, the mere necessity that a litigant be required to raise full faith and credit as a defense in state court litigation would be a deprivation of the right to full faith and credit sufficient to give rise to a cause of action for injunctive relief in federal court under § 1983. Under this theory the party bringing the § 1983 action would have a right to do what appellees did in the present case—litigate in the federal court whether he in fact has a judgment entitled to full faith and credit protec-

6. We express no view on the merits of appellees' full faith and credit claim. This is for the courts of Ohio to determine in the first instance. Similarly, the question raised on this appeal regarding the effect to be given the decision of the Supreme Court of Ohio in *Brown v. Lamb,* 36 Ohio St. 2d 8 (1973), need not be reached by this court.

tion. Federal injunction of the pending state proceedings would not avoid litigation of this question; it simply would shift the forum from a state to a federal court.

There is not the slightest reason for this court to doubt the ability or willingness of the state judges of Ohio to determine the *res judicata* or full faith and credit effect due the District of Columbia proceedings between the parties herein. In *Robb v. Connally,* 111 U.S. 624, 637 (1883), the Supreme Court, speaking through Mr. Justice John Marshall Harlan, said:

> Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them; for the judges of the State courts are required to take an oath to support that Constitution, and they are bound by it, and the laws of the United States made in pursuance thereof, and all treaties made under their authority, as the supreme law of the land, "anything in the Constitution or laws of any State to the contrary notwithstanding." If they fail therein, and withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination.

There is a hint of apprehension in appellees' brief that they might not receive a warm reception in the Ohio Court of Common Pleas.[7] Presented with the contention

7. We doubt any basis for this apprehension. This court is confident that appellees can and will be accorded a fair trial on the merits of their case in the Court of Common Pleas of Lucas County, Ohio.

that federal intervention was necessary because appeal through the state Courts might be doomed to failure, the Supreme Court in *Huffman* had this to say:

> [W]e are of the opinion that the considerations of comity and federalism which underlie *Younger* permit no truncation of the exhaustion requirement merely because the losing party in the state court of general jurisdiction believes that his chances of success on appeal are not auspicious. Appellee obviously believes itself possessed of a viable federal claim, else it would not so assiduously seek to litigate in the District Court. Yet, Art. VI of the United States Constitution declares that "the Judges in every State shall be bound" by the Federal Constitution, laws, and treaties. Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities. This we refuse to do. The District Court should not have entertained this action, seeking preappeal interference with a state judicial proceeding, unless appellee established that early intervention was justified under one of the exceptions recognized in *Younger*. (Footnote omitted.) *Huffman, supra,* at 610-11.

As we noted in *Inter-Faith, supra*:

> Interference in state civil proceedings like interference in state criminal or quasi-criminal proceedings, would preclude state courts "the opportunity to resolve federal issues arising in [state] courts," *Huffman, supra*, 95 S.Ct. at 1211, and would ". . . be interpreted as reflecting negatively upon the state court's ability to enforce constitutional principles." *Steffel v. Thompson,* 415 U.S. 452, 462, 94 S.Ct. 1209, 1217, 39 L.Ed.2d 505, 516 (1974). See *Cicero v. Olgiati*, 410 F.Supp. 1080, 1089-1090 (S.D.N.Y. 1976). Such interference would seem exactly counter to the firmly held position of this court in regard to state courts generally and in regard to the courts of the states of this circuit particularly. 542 F.2d 654 (6th Cir. 1976).

V.

Even if this were an appropriate case for an injunction to restrain Russell M. Brown from proceeding with his litigation in the State courts of Ohio, it was error for the District Court to issue an injunction against State judicial officers in the absence of a compelling reason to do so. *Compare O'Neill v. Battisti, supra,* 472 F.2d at 791.

The injunction was directed against all five named defendants. The first four were: the Honorable George N. Kiroff, individually and as Judge of the Common Pleas Court of Lucas County, Ohio; the Honorable Reno R. Riley, Jr., presiding judge of that court; Robert Kopf, individually and as Clerk of the court; and Jack Wagner, individually and as Lucas County Court Administrator.

Russell M. Brown, the plaintiff in the State court litigation, was the fifth defendant named in the complaint. If an injunction was necessary, it should have been issued against Brown, the litigant, and not against the State trial judge, the presiding judge, and court personnel. It was a violation of fundamental principles of State-federal relations for a federal judge to enjoin two State judges and their court personnel, when an injunction against the litigant would have accomplished the same purpose.

VI.

We also conclude that the District Court erred in enjoining Brown, the plaintiff in the Court of Common Pleas, from proceeding with his litigation in that court.

The District Court held that the present case falls within the "relitigation exception" to the federal anti-injunction statute, 28 U.S.C. § 2283, which provides as follows:

> § 2283. Stay of State court proceedings
>
> A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

We recognize that a federal court may enjoin proceedings in a State court "where necessary in aid of its jurisdiction or to protect or effectuate its judgments." *See e.g., Mapp v. Board of Education of the City of Chattanooga*, 341 F.Supp. 193 (E.D. Tenn. 1972), *aff'd*, 477 F.2d 851 (6th Cir.), *cert. denied*, 414 U.S. 1022 (1973); *International Association of Machinists and Aerospace Workers v. Nix*, 512 F.2d 125 (5th Cir. 1975).[8]

The right of the United States District Court to enjoin proceedings in a state court is based upon principles of equity deeply rooted in our system of jurisprudence. In Pomeroy's Equity Jurisprudence (5th Ed. 1941), Vol. 1, § 253 at 503, this rule of equity is stated as follows:

> [T]he court will interfere and restrain the defendant's further prosecution of successive actions at law, and will thus establish and quiet the plaintiff's right, when all the questions of law and fact involved in these actions have already been fully determined in the

8. See also opinion of three-judge District Court in *Hernandez v. Danaher*, 405 F.Supp. 757 (N.D. Ill. 1975), *probable jurisdiction noted*, 44 U.S.L.W. 3702.

> plaintiff's favor by some former judicial proceeding between the same parties.

No basis for equitable relief, justifying an injunction against further proceedings in the State court, is established on the record in the present case. As set forth in Part IV of this opinion, there is no finding by the District Court of bad faith. Further, appellees are not subjected to harassment or irreparable injury by having to raise their defenses in the Ohio court. We reemphasize that the Supreme Court of Ohio has remanded the case to the State trial court for further proceedings. No reason is shown why the appellees cannot and will not be accorded a fair trial on the merits of their case in the Court of Common Pleas of Lucas County, Ohio, where the full faith and credit, res judicata and collateral estoppel defenses presumably remain available to them.

Further, on the present state of the record, it is not demonstrated conclusively that, as stated by *Pomeroy, supra*: "All the questions of law and fact . . . have already been determined . . . by some former judicial proceeding between the same parties." As stated by Judge Gewin in *International Association of Machinists & Aerospace Workers v. Nix, supra*, 512 F.2d at 129-30:

> In view of the clear considerations of federalism supporting the Anti-Injunction Act, federal courts must proceed with caution in enforcing injunctions against state court proceedings. See American Radio Assoc. v. Mobile Steamship Assoc., Inc., 483 F.2d 1 (5th Cir. 1973). The purpose of § 2283 is to "avoid unseemly conflict between the state and the federal courts." NLRB v. Nash-Finch Co., 404 U.S. 138, 146, 92 S.Ct. 373, 378, 30 L.Ed.2d 328, 335 (1971). See also Mitchum v. Foster, 407 U.S. 225, 92 St.Ct. 2151,

32 L.Ed.2d 705 (1972); Oklahoma Packing Co. v. Gas Co., 309 U.S. 4, 60 S.Ct. 215, 84 L.Ed. 537 (1940); Signal Properties, Inc. v. Farha, 482 F.2d 1136 (5th Cir. 1973); Vernitron Corp. v. Benjamin, 440 F.2d 105 (2d Cir. 1971); Euge v. Smith, 418 F.2d 1296 (8th Cir. 1969) (Blackmun, J.): The Act does not embody a mere "principle of comity" but rather mandates an express and unequivocal limitation on the power of federal courts. Atlantic Coast Line R. R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 80 S.Ct. 1739, 26 L.Ed.2d 234 (1970); Amalgamated Clothing Workers v. Richman Bros., 348 U.S. 511, 75 S.Ct. 452, 99 L.Ed. 600 (1955). Furthermore, the sensitive nature of federal interference with state court proceedings requires that the statute be strictly construed. Atlantic Coast Line R. R. Co. v. Brotherhood of Locomotive Engineers, *supra;* Leiter Minerals, Inc. v. United States, 352 U.S. 220, 77 S.Ct. 287, 1 L.Ed.2d 267 (1957); Signal Properties, Inc. v. Farha, *supra. Cf.* Southern California Petroleum Corp. v. Harper, 273 F.2d 715 (5th Cir. 1960).

. . .

In order to affirm the district court's injunction, we must determine that it falls within one of the three Congressional exceptions to the Act. Atlantic Coast Line R. R. Co. v. Brotherhood of Locomotive Engineers, *supra;* Amalgamated Clothing Workers v. Richman Bros., *supra;* Tampa Phosphate R. R. Co. v. Seaboard Coast Line R. R. Co., *supra.* The injunction, in other words, must be "expressly authorized by Act of Congress," "necessary in aid of [the district court's] jurisdiction," or [necessary] "to protect or effectuate [the district court's] judgments."

. . .

> A consistent theme of our opinions is that federal courts may enjoin the relitigation in state court of issues that federal courts have *fully and finally adjudicated.* (Footnotes omitted, emphasis supplied.)

In the present case there is an unresolved question as to whether there has been a full and final adjudication of all the questions of law and fact in the District of Columbia litigation. The decision of the Court of Appeals for the District of Columbia was that Brown's suit in that jurisdiction was barred by the three year District of Columbia statute of limitations. *Brown v. Lamb, supra,* 414 F.2d 1210 (D.C. Cir. 1969). The question of whether the District of Columbia decision forecloses the right of Brown to proceed with his litigation in the Ohio courts is an issue to be decided by the State courts.

The posture of the present case is unusual. A civil rights statute, 42 U.S.C. § 1983, is invoked as a vehicle to attack the jurisdiction of the Ohio Court of Common Pleas to proceed with the trial of litigation in obedience to the mandate of the Supreme Court of Ohio.

In *Mitchum v. Foster,* 407 U.S. 225 (1972), the Supreme Court held that § 1983 is an exception to the federal anti-injunction statute. However, the Court was careful to emphasize:

> In so concluding, we do not question or qualify in any way the principles of equity, comity, and federalism that must restrain a federal court when asked to enjoin a state court proceeding. These principles, in the context of state criminal prosecutions, were canvassed at length last Term in *Younger v. Harris,* 401 U.S. 37, and its companion cases. They are principles that have been emphasized by this Court many times in the past. *Fenner v. Boykin,* 271 U.S.

240; *Spielman Motor Sales Co. v. Dodge*, 295 U.S. 89; *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45; *Watson v. Buck*, 313 U.S. 387; *Williams v. Miller*, 317 U.S. 599; *Douglas v. City of Jeannette*, 319 U.S. 157; *Stefanelli v. Minard*, 342 U.S. 117; *Cameron v. Johnson*, 390 U.S. 611. Today we decide only that the District Court in this case was in error in holding that, because of the anti-injunction statute, it was absolutely without power in this § 1983 action to enjoin a proceeding pending in a state court under any circumstances whatsoever. 407 U.S. at 243.

We hold that the peculiar posture of this litigation takes the case out of the class of proceedings traditionally dealt with under the "relitigation exception" to § 2283. *See, United States v. Ford Motor Company*, 522 F.2d 962 (6th Cir. 1975). We do not reach the question of whether the principles of *Younger-Huffman* should be applied in all situations involving § 2283 and the "relitigation exception" thereto.

The District Court erred in its determination that appellees faced "great and immediate" danger as a consequence of having to submit their full faith and credit defense to the Ohio state courts. *Younger-Huffman* counsels the exercise of great restraint when a litigant seeks federal court intervention in state court proceedings which themselves provide a ready forum for vindication of the rights at issue. We hold that appellees have not presented a proper case for federal court injunction.

This is not a case in which the District Court should retain jurisdiction pending a decision by the Ohio courts. The United States District Court and the United States Court of Appeals do not sit in review of the decisions of State courts. *See Coogan v. Cincinnati Bar Association*, *supra*, 431 F.2d 1209.

Nor is this a case where the doctrine of abstention requires retention of jurisdiction by the District. In *American Civil Liberties Union v. Bozardt*, 539 F.2d 340, 342 (4th Cir. 1976), *cert. denied*, ... U.S. ....., 45 U.S.L.W. 3427 (U.S. Dec. 13, 1976), the Fourth Circuit said:

> Abstention is generally held to be appropriate in cases in which both state and federal questions arise, and it is recognized that an action pending in state court will likely resolve state law questions which are dispositive of the federal claim. *Harris County Comm'rs Court v. Moore*, 420 U.S. 77, 95 S.Ct. 870, 43 L.Ed.2d 32 (1975). However, the *Younger* bar to federal intervention involves different considerations; it is recognized that when both state and federal questions are properly presented before a state court in pending state criminal proceedings, *see Younger, supra,* or in certain pending state civil proceedings, *see Huffman v. Pursue, Ltd.*, 420 U.S. 592, 95 S.Ct. 1200, 43 L.Ed.2d 482 (1975), principles of comity and federalism require that the federal courts not be permitted to interfere in the ongoing state proceedings. The underlying consideration of the *Younger* rule is the recognition that any federal claim properly asserted in and rejected by the state court is subject to review by the United States Supreme Court. 420 U.S. at 605, 95 S.Ct. 1200. Since the federal claim will eventually be subject to consideration by the Supreme Court, abstention appears to have no application to cases in which *Younger* bars relief. In this regard, the Supreme Court has stated that "[u]nlike those situations where a federal court merely abstains from decision on federal questions until the resolution of underlying or related state law issues . . . *Younger v. Harris* contemplates the outright dismissal of the federal suit, and the presenta-

tion of all claims, both state and federal, to the state courts." *Gibson v. Berryhill*, 411 U.S. 564, 577, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488 (1973).

The District Court's order of permanent injunction is vacated and its judgment reversed, but without prejudice to any rights the parties may have to proceed in the state courts of Ohio. The costs of this appeal are taxed against Lamb Enterprises, Inc.

McCREE, *Circuit Judge* (Concurring). I concur in the decision of the court, which requires the permanent injunction to be vacated.

I agree with Part V of the majority opinion, because the issuance of an injunction directed personally against two state court judges and two state court employees was, on the facts of this case, an improper interference in the operations of the state courts. *See Smith v. Martin*, 542 F.2d 688 (6th Cir. 1976). The complaint against them should have been dismissed.

I do not believe, however, that the allegations in the complaint set forth a violation by the remaining defendant, Russell Brown, of 28 U.S.C. § 1738 and of the Full Faith and Credit Clause of the Constitution, Art. IV, § 1, cognizable under 42 U.S.C. § 1983. A private party like Brown who initiates in a state court an action that may be subject to the defense of res judicata does not thereby violate the Full Faith and Credit Clause, which imposes a duty only upon the state. Because we have determined that the defendants who are judicial officers and their supporting personnel may not, on these facts be properly enjoined, and because the complaint does not state a claim against the private defendant under 42 U.S.C. § 1983, I would reverse the judgment of the district court.

Accordingly, I find it unnecessary to discuss the applicability of the doctrine of *Younger v. Harris*, 401 U.S. 37 (1971), and *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), to injunctions against the maintenance of purely civil actions to which the state or its agents are not parties. *Cf. Louisville Area Interfaith Committee for United Farm Workers v. Nottingham Liquors, Ltd.*, 542 F.2d 652 (6th Cir. 1976). Nor is it necessary to decide whether there is a relitigation exception to the *Younger-Huffman* doctrine, as there is a relitigation exception to the doctrine's statutory analogue, the federal anti-injunction statute, 28 U.S.C. § 2283.

JUDGMENT OF THE COURT OF APPEALS

(Filed January 31, 1977)

Nos. 75-2450-54

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAMB ENTERPRISES, INC., *et al.*,
Plaintiffs-Appellees,

v.

JUDGE GEORGE N. KIROFF, *et al.*,
Defendants-Appellants.

Before: PHILLIPS, *Chief Judge*, and MCCREE and ENGEL, *Circuit Judges.*

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel.

ON CONSIDERATION WHEREOF. It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed, but without prejudice to any rights the parties may have to proceed in the state courts of Ohio. The order of permanent injunction is vacated.

It is further ordered that Defendants recover from Lamb Enterprises, Inc. the costs on appeal, as itemized

below, and that execution therefor issue out of said District Court if necessary.

ENTERED BY ORDER OF THE COURT.

/s/ JOHN P. HEHMAN
Clerk

UNITED STATES CONSTITUTIONAL PROVISIONS AND STATUTES

Article IV, Section 1, United States Constitution [Full Faith and Credit].

Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Article VI, Clause 2, United States Constitution [Supreme Law of the Land].

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

28 U.S.C. §1738 [Full Faith and Credit].

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the

attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have *the same full faith and credit* in every court within the United States and its Territories and Possessions *as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.* (Emphasis added.)

42 U.S.C. §1983 [Constitutional Rights].

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. §1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

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28 U.S.C. §1343. Civil Rights and Elective Franchise.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

• • • • •

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 U.S.C. §2283 [Exception to the Anti-Injunction Statute].

A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or *to protect or effectuate its judgments.* (Emphasis added.)

28 U.S.C. §1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

• • • • •